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Ofcom Strategic Review of Digital Communications

Simwood eSMS Limited welcome's the opportunity to respond to the Strategic Review of Digital Communications Consultation (the "Consultation").

About Simwood

Simwood is an infrastructure-based wholesaler of voice and data services. We operate a national IP network and have regulated SS7 interconnects to the incumbent and other infrastructure-based wholesalers. The majority of our revenue is derived from wholesale IP voice services to 800 Communications Providers. In short, we provide a gateway between the PSTN and IP Voice services. Notably, our customer base are almost entirely convergence players building new services rather than reselling legacy services such as WLR, and we do not ourselves service resellers. Our comments are made in this context and thus from a different perspective to our vertically integrated peers, or channel-centric organisations.

Overview

Notwithstanding the comments we made in our earlier submission, prior to the publication of the Discussion Document, our submission centres in some detail on the following areas:

- GC18 and geographic number portability ("GNP")
- Strategic interconnect concerns
- Openreach separation

GC18 and GNP

We would firstly like to draw a distinction between "porting" and "switching" as there is scope for confusion.

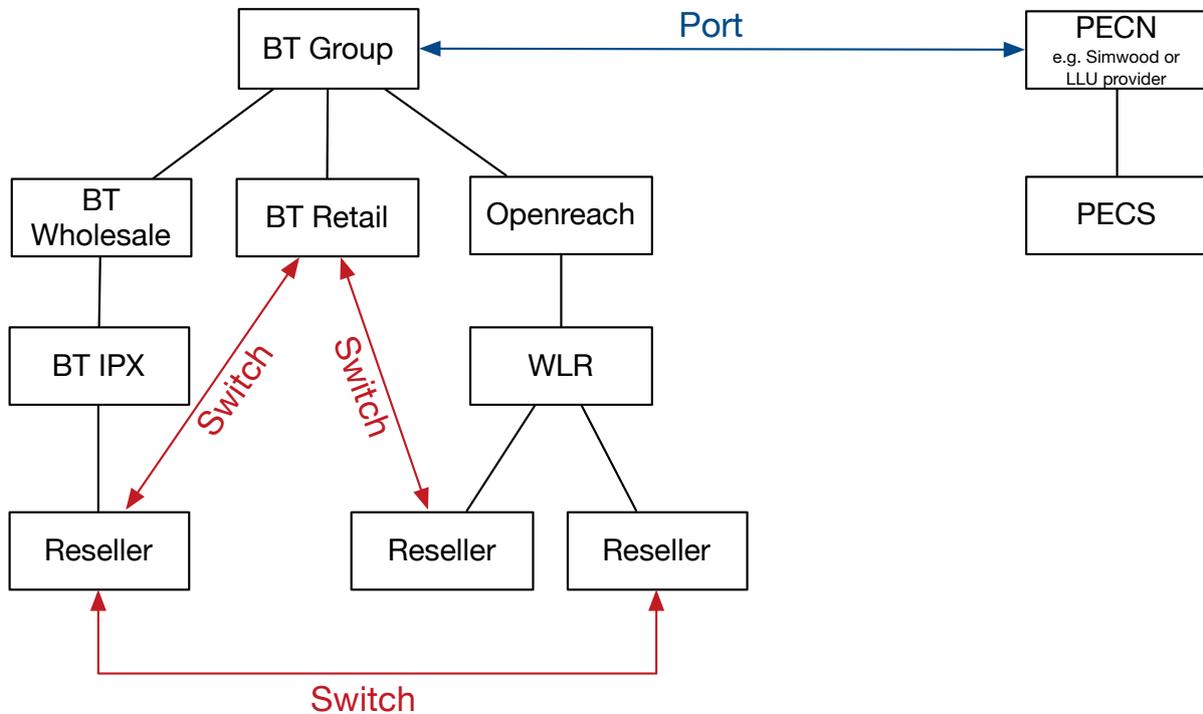
We consider "switching" to be the change of Communications Provider, Public Electronic Communications Service ("PECS") provider or Reseller within the incumbent. The Public Electronic Communications Network ("PECN") remains BT post-switch and, ignoring the complication of Carrier Pre-Select, service is fundamentally provided by BT. Switching could equally be considered to apply between managed services provided by the incumbent, e.g.



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from Wholesale Line Rental (“WLR”) to IP Exchange (“IPX”). Switching has had a lot of attention and we do not have any comments on it.

By contrast “porting” represents a change in PECN with calls being relayed from the losing network, to the gaining network, and those PECNs being interconnected directly or indirectly by a Regulated Interconnect.



The above diagram represents the distinction although hides a huge amount of complexity and ambiguity. Furthermore, whilst Simwood and a few of our contemporaries are pure-play PECNs, many large perceived competitors to BT may in part be PECNs by virtue of their LLU footprint but may also be WLR resellers by legacy or infill. Thus whilst our experience is exclusively of porting, it is very easy to erroneously view porting and switching as synonymous. Our comments relate to porting.

Legislative theory

We would cross-reference the submission made by the Internet Telephone Service Providers’ Association (“ITSPA”) which set out very clearly end-user rights under Article 30 of EC Directive 2002/22/EC (the “Universal Service Directive”). In short this affords end-users the



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right to port their number within one business day and requires Member States to provide appropriate sanctions, including an obligation to compensate end-users, in case of delay or abuse of porting.

Ofcom is deemed the competent national regulatory authority for the purposes of the Universal Services Directive established by the Communications Act 2003 (the "Act"). The Act grants Ofcom the power to set General Conditions ("GC") of which GC number 18 ("GC18") relates to Number Portability. The Act also empowers Ofcom to impose sanctions on entities not compliant with GC18.

The legal position therefore seems clear that Ofcom has the power to intervene in the market to mandate rules and, where it feels necessary, detailed processes.

Legislative practice

Ofcom appears to take a head-in-the-sand approach to GC18 in our experience. Industry standard processes have been agreed by working groups of the Office of the Telecommunications Adjudicator ("OTA") but where these are flouted or gamed there are few or no repercussions.

According to Ofcom's response to our recent Freedom of Information Request:

"Since 2008, Ofcom has considered it to be more appropriate and most efficient to handle the majority of complaints that the Competition Investigations Team receives about GC 18 through informal resolution".

As of end-August it reported 9 complaints relating to GC18 in 2015, yet we know that 3 of them were ours and we know of a further 2 that were requested by the complainants to be treated separately to ours. In 2014 the response claims 12 complaints, of which 1 was ours. We therefore consider ourselves in an expert position to comment on the efficacy and diligence of Ofcom's enforcement of GC18.

Our experience is regretfully of Ofcom's wilful disregard for end-user harm, lack of awareness of market structure (i.e. the distinction between a PECN with regulated interconnect and a reseller of a managed service) and complete naivety to the strategic and competitive implications of their inaction.



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Of our 4 complaints, not one has been resolved to the point of any positive action to enforce GC18 or mitigate the actual consumer harm in process. 3 of the four have latched on to whatever thread provided the quickest escape from effort and ease of “kicking it into the long grass”, even if that directly contradicted previous responses. The most recent one, which learned from past distractions and provided minimal wiggle-room was rebuffed altogether:

“We are currently resolving one regulatory dispute about portability charges and have two further number portability issues under informal consideration and I regret that we do not have the capacity to take on any more. We therefore are not investigating your latest complaint at this point in time.”

Meanwhile, despite alleged stretched resources, Ofcom have been able to engage in protracted and extensive debate about why they should do nothing and declined to even keep the cases open until the consumer harm was eased by our efforts. In every case we can confidently claim they made matters worse by emboldening the party we alleged to be in breach of GC18, and in none of the cases this year have we yet been successful in enabling the harmed end-users to port their service. This appears to directly contradict Ofcom’s reason for being of protecting end-users interests and promoting competition.

It would be easy to suggest this is a rogue or stretched department but we instead expect the apathy is institutional. In seeking a reasonable response that was positive for the end-users (i.e. Ofcom taking action however small) we wrote to Sharon White and the reply from her office simply focused on minutiae that had been used to justify inaction. It is now October and consumer harm we reported in June persists despite the full knowledge and wilful inaction of the body existing to prevent it.

Similarly, we do not accept the argument about lack of resources. Despite being unable to merely send a letter reminding a party of GC18, and possibly ease consumer harm, the Director of Investigations did find time to read our CEO’s Tweets and was able to send a vague passive aggressive expression of opinion on Ofcom letterhead.

We therefore believe that the message Ofcom are sending to industry is that GC18 is optional, consumer harm is disregarded and an already fragile process can be gamed. That feels somewhat contrary to the Universal Service Directive and very destructive for the industry.

The only actual recent action by Ofcom in respect of GNP (to our knowledge) was, against the opinion of ourselves and others, to reduce Fixed Termination Rates whilst ignoring Average



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Porting Conveyance Charges through the Narrowband Review. In doing so Ofcom afforded a windfall profit to the incumbent and rendered ported-in numbers loss-making for the rest of us. That feels indefensible from the perspective of promoting competition and the direct cause of one of the regulatory disputes preventing GC18 investigation above.

GNP practice

In our experience, day-to-day porting experience can be broken down in to two camps:

- Proper PECNs
- BT IPX resellers

Proper PECNs

Our experience of porting establishment with proper PECNs is one of best professional efforts within a fragile framework. Some PECNs have outsourced operations offshore which in no way eases things, and the incumbent has some frustrating “computer says no” type processes, but whilst the OTA process is fundamentally broken and gasping for overhaul, it basically works with a lot of mutual effort by sensitive parties.

BT IPX

Our experience with IPX is a completely different story and without exception all of the complaints referred to above relate to IPX resellers . IPX can be further sub-divided:

- GNP with BT on behalf of IPX
- GNP with a PECS hosting number on IPX

GNP with BT on behalf of IPX

Here we are concerned with numbers for which BT are the Range Holder but their reseller is using IPX rather than WLR. We have to send porting orders to Openreach as normal but, for some reason we suspect to be strategic, BT have established a dedicated porting team for IPX. Openreach in India have to forward porting orders to IPX and we are unable to speak to them directly. The result is most go astray, few can meet industry lead-times and our Operations Desk spends hours each day waiting for Openreach to get through to IPX, and then can only deal with 3 numbers per call. This



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appears to be designed to make life difficult especially when one considers the IPX porting team can make a nuisance of themselves for ports in the other direction without going through Openreach; this is seemingly regardless of whether the port has already been responded to or indeed was for us in the first place.

GNP with a PECS hosting numbers on IPX

Ignoring the fact that Ofcom purport to not allocate numbers to a PECS when they could obtain them from a PECN, there are a large number of resellers using BT's IPX managed service and hosting numbers on it. As Range Holders they have GC18 obligations but in the main our experience is that establishing GNP is essentially impossible due to mis-information. One of the complaints above centred on a reseller with number ranges that had no porting agreements with anybody and thus an end-user simply could not leave their service. This is entirely typical in our experience and we feel the product attracts a certain kind of reseller who appreciates being able to port in using BT's agreements but can insulate their own number ranges from porting. On the face of it, BT affords resellers all the tools they need to provide GNP but they seem to be consistently mis-informed and wrongly advised. We are frequently told that resellers have a "special deal" with BT, only port within IPX or that we need to use the IPX portal to port despite not being IPX customers. The latter has even been confirmed on the day of writing by IPX's "Head of Exports" despite being directly contradicted by IPX's official porting manuals. The result of this is huge consumer harm, market distortion and competitive strategic gain for the incumbent.

It is somewhat ironic that the Narrowband Review considered every Range Holder in the UK to have Significant Market Power, whether they were trading or not, and regardless of the commercial underpinnings of their numbering, yet the ability for a Range Holder to use a managed service and flout GC18 has been ignored. We believe the PECN hosting the range is actually the party with SMP (to differing degrees based on size) and strongly suggest Ofcom directs that BT include all hosted ranges (especially those on IPX) under its porting agreements. Doing so would solve the above issues in a stroke as other PECNs such as us could progress porting orders with Openreach regardless of whether they were on the IPX managed service or not. Other PECNs such as ourselves already make this optional for our infrastructure customers, and most opt-in, so we would be more than happy for this to be applied to all PECNs rather than unilaterally to BT.



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Wholesale ports

The existing porting process exists for the benefit of the end-user. This is a position that is often grey and abused, taking the example of a reseller's reseller subscribing to services in their own name rather than their customer's name, thus considering themselves the end-user and able to prosecute a wholesale migration of those numbers. We're ambivalent about wholesale porting existing as a legitimate act providing the processes can actually handle it, but in the interim it is another area of GNP what would benefit from regulatory guidance and clarification.

Suggested alternative for GNP

Whilst we know Ofcom is looking to change it, Mobile Number Portability (MNP) in the UK presently works. It is far from perfect in establishment terms and arguably one tool in preventing market entry but from a consumers perspective is night and day when compared to GNP. We feel the pressures in GNP are so acute and the process so far from functional that following the model employed by MNP or other best practices from overseas would be both transformational and easier to do than fixing the present processes. The focus should be on enabling a central database such that any end-user on any network could port to any other in a controlled gaining-provider lead way. Entry issues aside, the MNP process of an issued Porting Authorisation Code and centralised look-up would be the way to go. We would be very happy to contribute further on the detail of this.

We would like to see Ofcom grasp this vigorously with a view to putting a solution in place post-haste and in the interim try and keep the wheels from falling off by a) requiring BT to include IPX hosted ranges under its porting agreements on SMP grounds and b) taking GC18 seriously and taking positive steps to protect end-users.

Strategic positioning of BT IPX

BT IPX is a managed service belonging to the incumbent. It is not a Regulated Interconnect such as PECNs can have with the incumbent on terms overseen by Ofcom. We are frequently told by misinformed IPX resellers, and in turn their resellers tell consumers, that IPX is the centre of the universe for UK telecoms and that we and others with Regulated Interconnects are improper or inferior. The reverse is of course true but given the difficulties with porting, and IPX being the only division within BT we know of to have its own dedicated porting team,



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this appears to be the strategic direction BT are heading. Ofcom's apparent misunderstanding over the positioning of IPX as a managed service vs SS7 as the transport for a Regulated Interconnect, and a lack of interest in enforcing GC18 are creating the perfect storm for this suspected aspiration to become reality. Through this Ofcom are strengthening the incumbent's position and it will become increasingly tempting to see a managed service by the incumbent as a solution to the problem with GNP. This is of course an affront to competition and in the interim consumer harm persists, both being contrary to Ofcom's mandate.

For the avoidance of doubt, we would welcome an IP interconnect with the incumbent but it has to be regulated. We will not become a customer of a managed service which competes with us, just as no PECN with their eyes open would. Ofcom should seriously look at Regulated Interconnects and increase rather than decrease regulation there. As a managed service, the incumbent is able to vary the economic terms offered for IPX and we hear from larger PECNs how they have migrated to an IP interconnect with the incumbent on equivalent commercial terms. If true, this could be BT cherry-picking those to offer comparative terms to whilst the IP side of things is unregulated. Those who remain using Regulated Interconnects, such as ourselves, will we fear be extorted to either become a customer of BT IPX or face increased charges for SS7 interconnects (justified to Ofcom because bigger networks are no longer using it) down the line. This cannot be in the interests of competition but we fear is a situation the industry is sleep-walking into.

We understand it would be tempting to simply regulate IPX but we feel this would be a mistake. If IPX were to become a Regulated Interconnect to BT a large number of resellers would become PECNs, exaggerating some of the pressures the industry sees in other areas, not least GNP. That would also be severely damaging to those of us who are PECNs offering, on the face of it at least, similar services to IPX in that the present mistruth about IPX's position in the food-chain would become reality. Instead, we see no reason why the existing Regulated Interconnect cannot be extended to offer IP as a pari-passu alternative to SS7. We would support BT's need to avoid cannibalising IPX providing PECNs such as ourselves could, as the very existence of a Regulated Interconnect requires, enjoy fair regulated commercial terms to our peers. In the interim we hope Ofcom will vigorously resist increases to the costs of Regulated Interconnects due to bigger networks having become managed service customers of BT.



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Openreach separation

Whilst at first glance the separation of Openreach appeals it does so assuming it is done the way we would consider fair and sensible. Commercially it would streamline things and remove the windfall cashflows and beneficial cost models BT has arguably enjoyed to subsidise diversification. However, when we consider how BT has strategically positioned itself we fear there is a strong likelihood of Openreach becoming the “bad bank” leaving BT competitively strengthened by its separation and the rest of the industry paying the price.

Ultimately we would welcome it being separated but suggest that first regulatory attention is given to the separation of products amongst divisions. For example, Regulated Interconnects are the business of BT Wholesale, not Openreach, whilst Openreach provides the network and numbering for BT Group. Similarly, it is very hard to be an Openreach customer without spending money with BT Wholesale, e.g. WLR is an Openreach product but CPS is a BT Wholesale product; WLR without CPS causes calls to leak to BT Wholesale at penal rates.

Prior to considering separation we would welcome regulatory guidance and intervention to locate products appropriately. A party exercising its right to a Regulated Interconnect should do so with Openreach and have the choice of whether to spend money with BT Wholesale. Similarly, an Openreach reseller (e.g. of WLR) should be able to compete fairly with BT Retail/Business for calls rather than being forced to use BT Wholesale for CPS or call relay itself. BT Wholesale should be on comparable and equivalent terms to its wholesale competitors and they to it. Once that position exists we would wholeheartedly embrace the separation of Openreach.